

REGULAR

NUMBER: 201.6

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS 4.02 AND 9.01 OF CHAPTER 2 OF TITLE X OF THE MILPITAS MUNICIPAL CODE RELATING TO PERMITS REQUIRED FOR TREE REMOVAL AND REPLACEMENT REQUIREMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 21, 2016, upon motion by Councilmember Giordano, and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, a community concern is prevalent regarding the loss of “protected” (as defined in X-2-7.01) trees in connection with new construction projects on private property; and

WHEREAS, the City recognizes substantial economic, environmental, and aesthetic importance of protected trees planted within the community; and

WHEREAS, on June 7, 2016 the Milpitas City Council directed staff to prepare an ordinance to address the loss of trees in the community; and

WHEREAS, a regulation requiring replacement trees when “protected” trees are removed would minimize the loss of mature trees and their respective canopies, which provide shade and other environmental benefits; and

WHEREAS, the City’s existing ordinance does not establish a specified number of replacement trees required when “protected” trees are removed in connection with private development projects; and

WHEREAS, the creation of a new standard requiring two (2) replacement trees for every one (1) “protected” tree removed in connection with private development projects would help offset the loss of mature trees and their respective canopies.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE X, CHAPTER 2

Title X, Chapter 2, Section 4.02 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-4.02 - Permit Required for Removal

It shall be unlawful for any person other than City personnel in the performance of their duties to remove any street tree, protected tree or heritage planting without first applying for a permit issued by the Public Works Department. The Public Works Department may determine that a tree authorized for removal be replaced by the permittee through the compensation methods described in Section X-2-9.01, subsections (a), (b) or (c) or by planting at least two (2) trees for every one (1) protected tree removed by permit. The replacement trees shall be commensurate with the size of the tree being removed, as determined by the Director of Planning or his or her designee. For purposes of this section, any person, other than City personnel in the performance of their duties, that unlawfully removes a protected tree, shall be subject to City cost recovery in accordance with X -2-9.01

Title X, Chapter 2, Section 9.01 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-9.01

In pursuit of the City's remedy for the unlawful removal or damage to any City street tree, protected tree, or heritage planting in violation of this Chapter, the City shall seek cost recovery through the following:

- (a) Reimbursement to the City for the full costs of time and materials to prune, remove and/or replace trees within the public right-of-way or tree planting easements;
- (b) Reimbursement to the City for the value of the removed or damaged tree as determined by an arborist certified by the International Society of Arboriculture utilizing the current edition of the "Guide for Plant Appraisal, International Society of Arboriculture"; or
- (c) A combination of the above terms as determined by the Public Works Director.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.